In the High Court of Punjab and Haryana, Chandigarh

CWP No. 19553 of 2004

Date of Decision: October 26, 2006

Gurbax Singh and others

…Petitioners

Versus

H.V.P.N.L. and others

…Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**
**HON'BLE MR. JUSTICE M.M.S. BEDI**

PRESENT: Mr. S.S. Toor, Advocate,
for the petitioners.

Mr. Jagdeep Singh, Advocate,
for the respondents.

**JUDGMENT**

**M.M. KUMAR, J. (Oral)**

The prayer made by the petitioners in this petition filed under Article 226 of the Constitution is that their period of work charged service as detailed in para No. 2 of the writ petition be computed as qualifying service for the purpose of fixation of salary and thereafter revise their retiral benefits including pension, commutation and gratuity etc. For the relief claimed in the instant petition, the petitioners have primarily relied upon a Division Bench

judgment of this Court in the case of **Amar Nath v. Haryana Vidyut Parsaran Nigam Limited and others** (C.W.P. No. 2514 of 1999, decided on 11.1.2000, Annexure P-1). Even otherwise, the matter is not res integra. While deciding a similar controversy in the case of **Gurdev Singh v. H.V.P.N.L. and others** (C.W.P. No. 4201 of 2004, decided on 18.10.2006), we have observed that the claim of the petitioners is covered by the Full Bench judgment of this Court in the case of **Kesar Chand v. State of Punjab, 1988 (2) PLR 223**, and on that basis a subsequent amendment has been carried in Rule 3.17A of the Punjab Civil Services Rules, Volume II (as applicable to Haryana), which was incorporated on 4.2.1992 by amendment w.e.f. 9.1.1974. The same was adopted by the respondents on 23.6.1993 and was circulated by circular dated 6.8.1993 (R/1). It remains undisputed that the petitioners have rendered work charged service and were later appointed on regular basis after regularisation of their services.

The prayer made by the petitioners has been opposed by the respondents by taking two objections. Firstly, it has been submitted that the petitioners were required to submit an option within a period of three months from the date of their regularisation or from the date of issuance of circular dated 6.8.1993 (R/1). Secondly, it has been asserted that the benefit of employer's contribution along with interest has not been deposited by the petitioners which were required to be done after exercising option within a period of three months. Nothing has been produced before us, which may show that any acknowledgement of the circular was

obtained from any of the employees. Under Clause 4 of the circular there is a specific requirement that these instructions were to be got noted from all the employees and they should have acknowledge the receipt of the letter. It is evident that the aforementioned Clause itself has been violated as the circular has not been got noted in accordance with the requirement of Clause 4. Even otherwise, two Division Benches of this Court have taken the view that in the absence of acknowledgement of the circular by an employee, the plea taken by the respondents cannot be countenanced. In that regard reliance may be placed on two Division Bench judgments of this Court in the cases of **Dilwar Singh v. Haryana Power Generation Corporation Limited, 2006 (3) SCT 412** and **Ram Kumar v. Uttar Haryana Bijli Vitran Nigam Limited, 2006(3) SCT 628**. With regard to depositing of provident fund paid to the petitioners to the extent of employer's contribution, two Division Benches have taken the view that the aforementioned amount which was required to be deposited with the respondents could be adjusted from the amount which the petitioners may be found entitle to as a result of re-calculation by adding the work charged period by treating the same as qualifying service. In that regard reliance may further be placed on two Division Bench judgments in the case of **Harjinder Singh v. State of Punjab, 2003(4) SCT 1** and **Kasturi Lal Khurana v. State of Punjab, 2003 (4) SCT 462**.

In view of the above, the writ petition is allowed. The petitioners are held entitled to computation of their work charged service as qualifying service. The employer's contribution in the

provident fund drawn by the petitioners shall be adjusted and set off from the arrears which may become payable after the aforementioned calculation and computation. The respondents shall undertake the exercise of computation of arrears and complete the same within a period of two months from the date a certified copy of this order is supplied to them. The petitioners shall also be entitled to interest on the arrears after setting off employer's contribution from provident fund at the rate of 8% per annum from the date the arrears were payable till the date of appointment.

The petition stands allowed in the above terms.

**(M.M. KUMAR)**
**JUDGE**

**(M.M.S. BEDI)**
**JUDGE**

**October 26, 2006**
Pkapoor